IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1694 OF 2003

PRERANA … … PETITIONER

VS.

STATE OF MAHARASHTRA & ORS. … RESPODNENTS

Ms. M. Adenwalla for petitioner

Mr. S.R. Borulkar, PP with D. S. Mhaispurkar, APP for R-1

Ms. Seema Gupta i/b A.M. Saraogi for R-2

Mr. B.A. Desai, Addl. Solicitor General with Mr. H. V. Mehta and Mrs. U.V. Kejariwal for R-4.

CORAM: SMT. RANJANA DESAI &

D. B. BHOSALE, JJ.

DATED : 18-4-2007

ORAL ORDER :-(Per Smt. Ranjana Desai,J.)

We have heard the learned Counsel for the petitioner and thelearned counsel for the respondents for a considerable length. Both fairly stated that the petition can be disposed of by giving extensive directions and this court need not give reasons for the said directions. Hence we pass the following directions:

1 (a) “Anti-Trafficking Cell” of the police shall be created and established at the different levels in the police force, and such Cells shall be appropriately staffed.

(b) In every district at the level of the Local Crime Branch a Senior Police Inspector shall be designated as head of the “Anti-Trafficking Cell” having jurisdiction all over the district.

(c) At the Commissionerate level, a police officer of the rank of DCP shall be designated as head of the “Anti-Trafficking Cell” having jurisdiction all over the area falling under such Commissionerate.

(d) Upon a raid under ITPA being conducted by the Special Police Officer, the concerned “Anti-Trafficking Cell” shall be forthwith informed of the same to enable such Cell to supervise the investigation.

(e) An “Anti-Trafficking Cell” shall be created at the State level under the direct charge of the Deputy Inspector General of Police having jurisdiction all over Maharashtra.

2 (a) The Petitioner within 3 months shall prepare a list of suitable persons in every district who may be associated with the Special Police Officers to advise them in carrying out their functions under ITPA as envisaged under section 13(3)(b) of ITPA.

(b) The State Government within 2 months of receipt of the aforementioned list shall issue a Notification to associate such persons with the Special Police Officers as a non-official advisory board to advise them on the implementation of ITPA, and the said Notification shall be circulated amongst all police stations in Maharashtra.

(c) The State Government shall circulate the said list amongst Magistrates all over Maharashtra to enable them to take the assistance of such persons whilst carrying out their functions under section 17(2) of ITPA as envisaged under section 17(5).

3. The Special Police Officers are directed :

(a) to seek the association of the persons mentioned in the said list at clause 2(a) from the stage of raid till completion of trial;

(b) to produce before the Magistrate within 24 hours all those persons found on the brothel premises, including the rescued victims;

(c) to produce upon rescue operations an apparent child victim before the Child Welfare Committee;

(d) to immediately upon rescue operations contact a lawyer nominated by the Maharashtra State Legal Services Authority on the panel constituted to provide free legal-aid to the rescued victims for protecting the interests of the rescued victim;

(e) to record the detailed statements of the rescued victim at the place of safety in the presence of the persons mentioned in the said list and / or the Superintendent / Probation Officer / responsible staff of the institution;

(f) to seize / recover the personal belongings and documents of the rescued victims at the time of rescue operation or soon thereafter, and to hand the same to the concerned rescued victim;

(g) (i) to recover the child or children of the rescued victim at the time of raid or soon thereafter, and to reunite the child or children with their mother;

(ii) to separate the child or children from their mother only on a reasoned order being passed on inquiry by the Child Welfare Committee under the Juvenile Justice [Care and Protection of Children] Act 2000;

(h) to separate the rescued victims from the offenders immediately upon the rescue operation;

(i) to convey the rescued victims and the offenders in separate vehicles from the brothel to the place of safety / police lock-up or from the place of safety / police lock-up to the court;

(j) to place the rescued victims in a place of safety immediately upon the rescue operation, and in no event should the rescued victim be kept in the police station;

(k) upon raid of a brothel, to immediately inform the District Magistrate or Sub-Divisional Magistrate of the same, with a

request to initiate action under section 18(1) of ITPA for closure of the brothel;

4. The State Government is directed :

(a) to take measures to ensure that the institutions housing rescued women and children are equipped with basic amenities, and are clean, pollution free and well ventilated;

(b) to appoint at least 2 Counsellors for each State-run Protective Home expeditiously, preferably within six months;

(c) to include the appointment of Counsellors as a mandatory condition for granting license to private institutions housing rescued victims;

(d) to appoint at least 2 Probation Officers for each State-run Protective Home;

(e) to fill the staff vacancies in each State-run Protective Home;

(f) to provide the rescued victims with an opportunity to avail of formal education in the institutions, especially literacy programmes;

(g) to extend the Vocational Training Scheme presently pending approval of cabinet to Protective Homes;

(h) to frame Rules under section 23 of ITPA, especially for carrying into effect the provisions of section 18;

(i) to include training on law related to children, including ITPA, on the curriculum of the Judicial Officer's Training Institute, Nagpur;

(j) to include training on law related to children, including ITPA, on the curriculum of the Police Training Academy;

(k) to constitute Special Courts as envisaged under section 22A of ITPA within 6 months.

5. The Superintendents of the institutions housing rescued child victims or major victims are directed :

(a) that no person shall be allowed access to a rescued child victim / major victim without permission of the Child Welfare Committee / Magistrate, as the case may be;

(b) that on the aforementioned permission being granted by the Child Welfare Committee / Magistrate, such person shall be given access in the presence of the Superintendent or Probation Officer or any other responsible staff of the institution;

(c) that the Superintendent or Probation Officer or any other responsible staff of the institution shall accompany the rescued child victim / major victim in the event of such rescued victim having to go outside the institution premises.

6. The Magistrates and Sessions Judges are instructed :

(a) to ensure the presence of a Counsellor in court whilst a rescued child victim's testimony is being recorded;

(b) to provide the rescued child / major victim with the assistance of a lawyer nominated on the panel constituted by the Maharashtra State Legal Services Authority;

(c) to seek the assistance of lawyers nominated on the panel constituted by the Maharashtra State Legal Services Authority as friend of the court [amicus curae];

(d) to pass orders under section 18(1) of ITPA when convicting a person of an offence under section 3 and/or Section 7 of ITPA;

(e) to get verified the rescued victim's documentary evidence of age if the same shows her to be a major by directing the concerned police personnel to ascertain its veracity with the authority that has issued the said document and file a report before the court;

(f) to order a second medical examination to ascertain the age of the victim to be conducted by a medical officer attached to another public hospital, in case the results of the first medical examination are under doubt. Age verification shall be done in (1) Nair Hospital, Mumbai

Central, (2) St. Georges Hospital, Mumbai (3) Cama and Albles Hospital, Mumbai and (4) Lokmanya Tilak Medical Hospital, Sion, Mumbai, and all civil hospitals at District Headquarters and rural hospitals in mofussils.

(g) to record the testimony of the rescued child / major victim within 1 month of the charge-sheet being filed so that the victim's rehabilitation is not hindered;

(h) to expedite the trial of cases relating to trafficking and commercial sexual exploitation, and preferably to dispose of such cases within 6 months of the charge-sheet being filed.

7. The Magistrates are directed to follow the following procedure when rescued major victims of trafficking are brought before them :

(a) The Magistrate shall, after giving an opportunity of being heard to the rescued major victim, cause an inquiry to be made by the Probation Officer as to the correctness of the information received under Section 15 (1) or Section 16 (1) of ITPA, as the case maybe, the age, character, circumstances and antecedents of the person and the suitability of her

parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home and the prospects of her rehabilitation as stipulated under Section 17 (1) of ITPA;

(b) The inquiry by the Probation Officer should be completed as expeditiously as possible and in any case within three weeks of the date of the order;

(c) During the period of such inquiry by the Probation Officer, the major victim shall be kept in a place of safe custody and she should not be kept in the custody of any person likely to have a harmful influence over her;

(d) The Magistrate shall consider the report of the Probation Officer in consultation with the persons mentioned in the said list under Section 17 (5) of ITPA [item No.2(c) above] and thereafter pass appropriate orders under the Act of rehabilitation, repatriation or release, as the case maybe.

8. The Magistrates are directed to initiate prompt action when an application under section 16 of ITPA is filed before them so that the victim is rescued from the flesh trade.

9. The Maharashtra State Legal Services Authority are directed :

(a) To provide free legal-aid to the rescued victims immediately upon the rescue operation and till completion of trial;

(b) to distribute the names and particulars of the lawyers to all Magistrates and Sessions Judges and Child Welfare Committees.

10. The Auditor General shall consider and decide within 1 month the proposal pending before him about providing petty cash to Superintendents of State-run institutions.

11(a) The Public Works Department shall complete the construction of the institution for rescued victims under Swadhar Project in Mumbai expeditiously and preferably within two years;

(b) The Women & Child Development Department, Government of Maharashtra shall make operational the institution for rescued victims under Swadhar Project in

Mumbai within 2 months from completion of its construction.

12. Trafficking Police Officer shall investigate cases registered under ITPA as contemplated under Section 13(4) thereof or assist any investigation of any cases under ITPA.

13(a) The State Legal Advisory Committee to formulate an effective rehabilitation programme, including the mode of its implementation, within 4 months of its constitution. S L A C mayinvolve the corporate sector and employment agencies in their rehabilitation project.'

(b) The Women & Child Development Department, Government of Maharashtra shall implement the rehabilitation programme in all its institutions housing victims of trafficking and commercial sexual exploitation.

© The S L A C shall annually evaluate the rehabilitation programme, and submit its evaluation report with its suggestions to the State Level Advisory Committee and the Women and Child Development Department, Government of Maharashtra for appropriate action.

14 (a) The Maharshtra State Commission for Women shall research and publish annual reports with regards to the scale and incidence of trafficking of women and children for commercial sexual exploitation.

(b) The Women and Child Development Department, Government of Maharashtra to make operational within two months the software titled "Victim Trafficking Registry", and the data so collected to be kept onfidential for use of the government departments and police officials to optimize social and legal intervention. The petitioner shall render all active assistance for establishing this Registry.

15. Petition is disposed of.

JUDGE.

JUDGE.